

E.O. 11652: This order does not have an equivalent section nor did it contain equivalent prohibitions, requirements or limitations. Section 2 generally permitted delegation of such authorities provided the delegation was in writing and, with respect to "TOP SECRET" authority, that the delegation be to departmental senior principal deputies, assistants and heads, senior principal deputies and assistants of major elements of departments.

(e) Paragraph 1-205. Exceptional Cases

This paragraph permits an employee or a contractor of an agency that does not have original classification authority to protect information believed to require classification and to refer such information to an agency that has appropriate subject matter interest and classification authority, or, if such an agency cannot be determined, to forward the information to the Information Security Oversight Office.

Comment: This section serves a useful purpose in that it provides interim protection until appropriate classification action can be taken.

Recommendation: Retain the provision.

E.O. 11652: Section 10 of this order was a similar provision. Section 2(D) also contained a provision that any agency not listed or subsequently established did not have classification authority until such authority was granted in writing.

(3) Subsection 1-3. Classification Requirements.

(a) Paragraph 1-301. This paragraph contains

a specification of the categories of information that may be considered for classification and excludes all others. The categories include military matters, foreign government information, intelligence matters, foreign relations matters, scientific, technological or economics matters related to national security, safeguarding of nuclear materials, or other matters related to the national security designated by the President or a person designated by the President.

Comment: E.O. 11652 contained no similar specification of categories of information that were subject to classification although certain types of information such as cryptologic and communications intelligence information were listed as examples of the types of information that could be classified at a particular classification level (in this case, TOP SECRET). The failure to list other important categories of information including cryptologic information has led some, including some courts, to read in an intent to downgrade the protection of such information.

Recommendation: Add to the existing categories of E.O. 12065 the category of "cryptologic activities, sources, methods, and materials". This category would cover signals intelligence activities, sources and methods, and communications security activities, methods and materials.

E.O. 11652: This Order did not contain a similar provision. However, certain information categories were listed by way of example within the individual classification category paragraphs including the mention of complex cryptologic and communications intelligence systems in the TOP SECRET paragraph.

and prevent unauthorized access, procedures for disposition of classified information, and procedures for protection of information disseminated outside the Executive Branch.

Comment: None.

Recommendation: None.

E.O. 11652: Section 6 of this order established essentially the same policy using virtually the same language with some slight additional emphasis on the need to protect information from unauthorized disclosure.

(2) Subsection 4-2. Special Access Programs.

This subsection provides authorization for agency heads authorized original classification authority to create special access programs to control access, distribution and protection of particularly sensitive information and establishes a requirement for the review of all existing programs as well as the review of new programs every five years. The DCI is authorized to establish a special access program for intelligence sources and methods.

Comment: This provision has been the subject of substantial controversy and the origin of proposals that could have resulted in substantially increased administrative costs with no commensurate gain in protection or production of intelligence. E.O. 11652 provided for a limited number of special access programs including programs for communications intelligence, cryptography and intelligence sources and methods. The change in the authority to provide special protection for communications intelligence and cryptography programs caused special problems particularly with respect to the highly automated and technical nature of

information handling systems for these categories. The Secretary of Defense is the executive agent for the U.S. Government for signals intelligence and communications security and requires authority similar to that contained in Section 9 of E.O. 11652 in order to carry out those responsibilities.

Recommendation: Delete the subsection and restore Section 9 of E.O. 11652, substituting "signals intelligence" for "communications intelligence" and adding the "defense plans".

E.O. 11652: Section 9 of this order provided for special requirements with respect to access, distribution and protection of classified information including requirements related to communications intelligence, cryptography, and intelligence sources and methods.

(3) Subsection 4-3. Access by Historical Researchers and Former Presidential Appointees. This subsection provides that restrictions on access to classified information may be waived for historical researchers and former presidential appointees subject to certain conditions.

Comment: None.

Recommendation: None.

E.O. 11652: Section 12 of this order contained a similar waiver authority and conditions except that it contained a further condition that classified information not be published or compromised as a result of access.

(4) Subsection 4-4. Reproduction Controls. This subsection provides for controls on the reproduction of